

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling	)	
Obligations of Incumbent Local Exchange	)	CC Docket No. 01-338
Carriers	)	

**Comments of Staff of The State Corporation Commission of the State of Kansas**

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### **Executive Summary**

On June 16, 2003, the State Corporation Commission of Kansas (KCC) opened a proceeding to address whether competitive local exchange carriers (CLECs) are impaired without access to certain unbundled network elements (UNEs) and to develop a batch hot cut process. Comments were offered by parties on several issues, such as, establishing a procedural schedule, preliminary indications of where non-impairment might occur for certain UNEs and preliminary definitions of a geographic market. Ultimately, direct testimony was filed regarding the geographic market definition for switching, whether the self provisioning trigger had been met for switching, the appropriate line count cut-off between the mass market and the enterprise market, the batch hot cut process, identification of transport routes for which non-impairment might be established, the identification of loop locations for which non-impairment might be established, and whether the self provisioning or wholesale provisioning triggers had been met for loops and transport. However, the proceeding was suspended prior to the filing of responsive testimony and the technical hearing. Therefore, the KCC did not reach any conclusions regarding the impairment issues or the batch hot cut process.

The KCC divided its proceeding into two tracks. The first track addressed switching impairment issues. Regarding the definition of the market, the KCC received testimony supporting a definition of the relevant geographic market based on Metropolitan Statistical Areas (MSAs), based on LATA boundaries, based on groups of wire centers within the MSAs, and based on individual wirecenters. The KCC received testimony indicating that the self-provisioning trigger for switching had been met in the Kansas City and Wichita MSAs or for groups of wire centers within the MSAs, or that it was not met for any definition of the market. Testimony regarding the proper cut-off between the mass market and the enterprise market varied from four lines to thirteen lines with many parties reserving the right to provide testimony on this issue in responsive testimony. Finally, a batch hot cut process, rates and a cost study supporting the rates were presented to the KCC and parties commented on the shortcomings of the process.

In the second track of the proceeding, parties addressed loop and transport impairment issues. The KCC received testimony that indicated eighteen transport routes and twenty-four loop locations met the requirements for a finding of non-impairment by either the self pro-visioning trigger or the wholesale trigger. The KCC also received testimony challenging whether a finding of non-impairment could be made for the transport routes and the loop locations.

Again, since the KCC suspended the proceeding it did not reach any conclusions regarding impairment or non-impairment or the sufficiency of the batch hot cut process. However the KCC directed its Staff to provide this summary for the Commission's use in its deliberation of these issues. We must note that some parties relied on data that was not obtained through discovery but rather through their own sources of information. There is a large discrepancy in the line count information provided by parties who relied on their own means of collecting data and that information provided in response to discovery. Parties did not have an opportunity to challenge the accuracy of such data. Confidential and non-confidential data is attached in Attachments A-O.

## **Background**

1. In its Order and Notice of Proposed Rulemaking, released August 20, 2004, the Commission encouraged state commissions to file summaries of state proceedings conducted in response to the Commission's *Triennial Review Order*.<sup>1</sup> The Commission requested that the summaries highlight factual information regarding whether CLECs are impaired without access to certain UNEs and regarding the development of a batch hot cut process.<sup>2</sup>

2. The Staff of the State Corporation Commission of Kansas (KCC Staff) offers the following summary of the Kansas proceeding to assist the Commission in implementing Section 251(c)(3) of the Communications Act of 1934, as amended, that is responsive to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in its review of the *Triennial Review Order* (DC Circuit Decision). Following the DC Circuit Decision, the Kansas proceeding was suspended on March 3, 2004, before reply testimony was filed or a hearing conducted. Therefore, the KCC did not reach any conclusions regarding impairment. Because the KCC did not reach any conclusions, the KCC does not believe it is appropriate for it to submit a summary. However, the KCC does want the FCC to have data for its deliberations and has directed the KCC Staff to summarize the data presented in the Kansas proceeding. Parties to the proceeding reviewed this summary. No party indicated that it would join in these comments.

3. On June 16, 2003, the KCC issued an order opening a proceeding to address the *Triennial Review Order* in anticipation of its release. Subsequent to the release of the *Triennial Review Order*, the KCC requested that parties file comments regarding:

- a. the procedures that should be used to address the issues in the limited timeframe permitted by the Commission;
- b. whether any party intended to rebut the national finding that carriers are not impaired without access to unbundled local switching in the enterprise market and if so, the procedure to follow;
- c. whether there were any geographic market contours currently defined and in existence in Kansas that would be appropriate for the impairment analysis; and,
- d. whether the geographic market should be determined prior to application of the trigger analysis.

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<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking. (*Triennial Review Order*)

<sup>2</sup> *In the Matter of Unbundled Access to Network Elements and the Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order and Notice of Proposed Rulemaking. (*Notice of Proposed Rulemaking*)

The KCC also informed parties of its intent to schedule a workshop to review the discovery developed by NARUC's Triennial Review Implementation Process (TRIP) Task Force and to establish a procedural schedule once the parties had filed and reviewed the requested comments. The KCC held a workshop on October 22, 2003. Following the workshop, the KCC established a procedural schedule that had been agreed to by the parties. The parties agreed that the KCC should proceed following two tracks: a track to receive analysis and make determinations regarding local switching to serve mass market customers, including the batch hot cut process, and a second track to receive analysis and make determinations regarding loop and transport issues. It was also agreed that Southwestern Bell Telephone, L.P. (SWBT), would file statements identifying its challenge of the national findings so that the focus of the proceeding could be narrowed and all parties could then target their analysis to the areas of challenge. SWBT agreed to file an initial non-binding statement on November 7, 2003, and a binding statement on December 12, 2003, identifying areas in which it would challenge the national finding of impairment without access to unbundled local switching when serving mass market customers. SWBT also agreed to file an initial non-binding statement on December 5, 2003, and a binding statement on January 12, 2004, identifying where it intended to challenge the finding of impairment without access to dedicated transport and DS-1, DS-3 and dark fiber local loops. A schedule was then set for all parties to file direct and reply testimony regarding the issues in each track after the filing of the binding statements. Evidentiary hearings were scheduled for each track. The parties agreed to discovery procedures, with KCC Staff serving the initial requests for information based on the TRIP Task Force discovery, which could then be augmented with further discovery by any party.

4. Based on the comments of parties, the KCC issued an order on October 3, 2003, stating that it would not conduct a proceeding to address the national finding of no impairment without access to unbundled local switching used to serve the enterprise market.

5. On October 17, 2003, United Telephone Company of Kansas d/b/a Sprint, United Telephone Company of Eastern Kansas d/b/a Sprint, United Telephone Company of South Central Kansas d/b/a Sprint, United Telephone Company of Southeastern Kansas d/b/a Sprint, and Sprint Communications Company L.P. d/b/a Sprint (collectively, Sprint) filed comments with the KCC indicating, among other things, that the company did not intend to rebut during the initial nine month period the national impairment findings concerning switching, enterprise loops in any customer locations or any transport routes in its incumbent local exchange carrier (ILEC) properties in the state of Kansas. Therefore, Sprint would continue to offer UNEs consistent with the Federal Communication Commission (FCC) rules.

#### **Impairment Without Access to Unbundled Local Switching in the Mass Market**

6. On December 12, 2003, SWBT filed its *Identification of Final Position on Mass Market Switching*. SWBT stated that it planned to provide evidence that CLECs are not impaired without access to unbundled local circuit switching to serve mass market customers in the Kansas City and the Wichita Metropolitan Statistical Areas (MSAs). SWBT did not seek to challenge the finding of impairment without access to unbundled

local switching for serving mass market customers in the other two Kansas MSAs (Topeka and Lawrence) or in any rural locations in Kansas. In this filing, SWBT indicated that the company would pursue a finding of “no impairment” through evidence that the self-provisioning trigger was met but would not pursue such a finding through evidence that the self-deployment was economic even if the self-provisioning trigger was not met. SWBT stated its belief that the MSA is the appropriate geographic area to be used for the impairment analysis. SWBT also stated that it would show that the appropriate “cut-off” between the mass market and the enterprise market is three lines. That is, customers served with four or more DS0s should be considered to be within the enterprise market. On January 30, 2004, the parties filed direct testimony addressing SWBT’s binding statement.

#### Definition of the Geographic Market

7. SWBT argued that the MSA is the proper geographic market to be utilized in the impairment analysis. Dr. Dennis Weisman and Mr. Gary Fleming testified on the switching issues for SWBT. Dr. Weisman suggested that a geographic market should be defined as follows:

A geographic market is a geographic area in which sellers provide products or services that customers treat as substitutes for one another and thus which compete against one another. As a leading text describes the concept:

The geographic limit of a market is determined by answering the question of whether an increase in price in one location substantially affects the price in another. If so, then both locations are in the same market.<sup>3</sup>

Regarding mass market local telecommunications service, Dr. Weisman suggests that CLECs operating in the urban area would also compete for customers located in associated suburban areas because reductions in prices for local service in suburban areas would lead to lower rates in the urban area. The converse would also be true.<sup>4</sup> Dr. Weisman supports this conclusion by stating that CLECs advertise to mass market customers throughout a metropolitan area and because it is relatively easy to serve a suburban customer through a switch located in the urban area, incurring some cost to transport traffic to and from the switch location.<sup>5</sup> While not a perfect match, he states, that the MSA is a geographic area closely aligned with his definition of a geographic market.<sup>6</sup> Additionally, Dr. Weisman states that MSAs are appropriate since the FCC has used them in the past to implement changes. These cases are the porting of wireline

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<sup>3</sup> Dr. Weisman Direct, January 30, 2004, p. 9, lines 16-22; the leading text is identified as: D.W. Carlton and J.M. Perloff, *Modern Industrial Organization*. Third edition. (2000), New York: Addison-Wesley, p 615.

<sup>4</sup> Ibid, p. 10, lines 9-12.

<sup>5</sup> Ibid, p. 10, line 18 – p. 11, line 21 and p.12, lines 1-4.

<sup>6</sup> Ibid, p. 14, lines 21-23.

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telephone numbers to wireless carriers, assessment of the merger impacts of mergers of separate ILECs (i.e. Bell Atlantic-NYNEX), and in granting pricing flexibility for certain interstate services. MSAs have been used for market determinations and provide for ease of administration.<sup>7</sup> Dr. Weisman states that defining the geographic market smaller than the MSA, such as the wire center, would be inconsistent with his definition and does not reflect the manner in which CLECs compete to take advantage of available scale and scope economies.<sup>8</sup>

8. Mr. Fleming provided factual information to support the application of Dr. Weisman's theoretical description of a geographic market. Mr. Fleming indicates that the data supports SWBT's claim that switches can be used to serve entire MSAs or multiple MSAs. He notes that even AT&T, a CLEC, has supported the notion that switches are capable of serving large geographic areas, including an entire LATA.<sup>9</sup> Mr. Fleming and AT&T indicate that a switch can serve a large area using some form of special access, multiplexing, collocation arrangements and transport facilities. Mr. Fleming presented evidence to address the Commission's *Triennial Review Order* criterion that MSAs actually account for the location where CLECs serve mass market customers. Mr. Fleming provided evidence demonstrating that CLECs have the ability to offer service over large geographic areas, an entire MSA, within Kansas. On Attachment GAF Direct 4, attached here as Attachment A, he identified eighteen CLECs that have deployed a total of twenty-six switches to serve Kansas customers. Twenty-one of those switches are located in the Topeka, Lawrence, Wichita and Kansas City MSAs. This information was obtained from Telcordia's *Local Exchange Routing Guide* (LERG).<sup>10</sup> In addition, Mr. Fleming provided data indicating the location of CLEC lines (using UNE loops or telephone numbers from the E911 database for non-UNE loops), the location of the ported numbers within CLEC switches, the exchange location of the NXX codes found in CLEC switches, and the location of collocation arrangements. From this data he concluded,

. . . most of the customers in SWBT's service area that CLECs serve from their own switches are located in the SWBT-served MSAs identified above. Therefore, MSAs account for the locations where CLECs *actually serve customers*, including mass market customers. (emphasis original)<sup>11</sup>

Thus, he concludes that CLECs target and serve mass market customers in the MSAs. He asserts that media outlets typically reach customers in areas that approximate the entire MSA which lends greater support to the notion that CLECs target entire MSAs.<sup>12</sup> To further support his position, Mr. Fleming analyzed whether CLECs could economically serve a geographic area such as the MSA. Mr. Fleming examined UNE loop rates and the retail rates. From this data he finds that within the Kansas City and Wichita MSAs, 92% of SWBT access lines are within the lowest priced UNE rate zone.

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<sup>7</sup> Ibid, p. 16, line 8 – p. 18, line 3.

<sup>8</sup> Ibid, p. 25, line 8 – p.26, line 8.

<sup>9</sup> Mr. Fleming Direct, January 30, 2004, p. 17, line 18 – p. 18, line 7.

<sup>10</sup> Ibid, p. 16, lines 15-16.

<sup>11</sup> Ibid, p. 28, lines 10-13.

<sup>12</sup> Ibid. p. 29, lines 12-15.

Additionally, over 88% of the access lines in the two MSAs are in the highest SWBT retail rate groups seven and eight in Kansas. He concludes that for the vast majority of the access lines in the Kansas City and Wichita MSAs, CLECs have access to a combination of the lowest UNE loop prices and the highest business rates, and that the variation in rates that exists within the MSA does not impair a competitor's ability to serve mass market customers in those MSAs.<sup>13</sup> Additionally, Mr. Fleming notes that the rates charged by SWBT for collocation do not vary from wire center to wire center. He adds, "... none of the wire centers in the Kansas MSAs are closed to physical collocation due to space constraints."<sup>14</sup> He acknowledges that transport costs will, in general, be greater the larger the geographic area. However, Mr. Fleming states that most wire centers in the MSAs are reasonably close to one another and that transport is offered at TELRIC-based rates.<sup>15</sup>

9. Mr. Fleming notes two problems associated with using the MSA as the geographic market, but asserts that those problems could be resolved. First, wire center boundaries do not perfectly align with MSA/county boundaries, thus, he recommends that those wire centers for which the central office is physically located within the MSA be considered part of the MSA.<sup>16</sup> Second, it is possible for the Office of Management and Budget to change MSA boundaries to include more counties. Mr. Fleming suggests that the market area boundary could be altered upon petition by one of the parties or could be frozen to match the boundary of the MSA at the time the analysis is initially performed.<sup>17</sup>

10. Sage Telecom, Inc. (Sage), argues that the relevant geographic market is no larger than an individual wire center. Mr. Robert W. McCausland and Mr. Dana Crowne provide testimony regarding the definition of the geographic market for Sage. Mr. McCausland suggests that the standards set forth in the *Triennial Review Order* and applied to CLECs in Kansas will show that individual SWBT wire centers should be delineated as the relevant geographic markets. He contends that the larger the geographic market definition the greater the risk that consumers will see less competition and higher retail prices.<sup>18</sup> Mr. Crowne states that CLECs make entry decisions at the wire center level because the cost to interconnect is incurred on a wire center by wire center basis. He argues that CLECs must determine whether the expected revenue from customers in a particular wire center is sufficient to cover the cost of serving that wire center.<sup>19</sup> To further his argument, Mr. Crowne states that revenue and cost varies largely based on the customer density. Customer density varies from wire center to wire center, thus, so does the entry decision. He acknowledges that a CLEC may group multiple wire centers together for the purpose of achieving economies of scale and scope, but maintains that most decision making analysis occurs at the wire center level.<sup>20</sup> Additionally, Mr.

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<sup>13</sup> Ibid. p. 31, lines 8-14.

<sup>14</sup> Ibid. p.33, lines 18-19.

<sup>15</sup> Ibid. p. 32, lines 7-9.

<sup>16</sup> Ibid. p. 12, lines 11-19.

<sup>17</sup> Ibid. p. 13 line 9-p. 14, line 2.

<sup>18</sup> Mr. McCausland Direct, January 30, 2004, p. 8, lines 8 – 10.

<sup>19</sup> Mr. Crowne Direct, January 30, 2004, p. 7, line 23-p.8, line 7.

<sup>20</sup> Ibid, p. 9, lines 11-14.

Crowne points out that availability of collocation space, accuracy of outside plant records, the amount of loop carrier equipment, the age and condition of plant, the knowledge level of central office technicians, etc., all vary from wire center to wire center and will impact the entry decision.<sup>21</sup> He suggests that this is additional support for a finding that the geographic market should be defined on a wire center basis.

11. MCI also suggests that the relevant geographic market is the wire center. Dr. August H. Ankum provides testimony supporting this position. Dr. Ankum suggests that the wire center is the logical geographic market because it is where access to the ILEC's network occurs, where collocation occurs, and where a substantial amount of the fixed and sunk cost associated with serving mass market customers occurs.<sup>22</sup> Dr. Ankum also states that,

[t]he wire center definition recognizes that the ability to use self-provisioned or third-party-provisioned switches varies geographically and can readily distinguish markets where different findings of impairment are likely. This can be accomplished by examining the factors present in each wire center that affect the ability of the CLECs to avail themselves of a competitive alternative to the incumbent's switching, and by examining the extent to which competitors are in fact providing qualifying services to customers in that wire center over self-provisioned or third-party provisioned switches.<sup>23</sup>

He states that revenue and cost vary based upon customer density and that customer density varies among wire centers. Therefore, revenue and cost vary by wire center. Further, Dr. Ankum states that the incumbent currently tracks data on a wire center basis and customer demographics can be examined on a wire center basis from public sources of data.<sup>24</sup> Dr. Ankum suggests that defining the geographic market too broadly could lead to a finding of no impairment in an area in which consumers actually have few competitive alternatives and ultimately would have no competitive options. Finally, Dr. Ankum states that the existence of Integrated Digital Loop Carrier (IDLC) technology may impose challenges to a CLEC serving through the use of the incumbent's unbundled loop and therefore an exception to the wire center definition should be made when IDLC is present in the wire center.<sup>25</sup> He also suggests that an exception should be made if price discrimination is occurring within a particular wire center or if CLECs are only targeting a particular subset of mass market customers.<sup>26</sup> Finally, Dr. Ankum suggests that his definition of the geographic market is consistent with the horizontal merger guidelines put forth by the Department of Justice and the Federal Trade Commission.

12. Mr. Joseph Gillan provided testimony regarding the definition of the geographic market on behalf of AT&T Communications of the Southwest, Inc. (AT&T), Birch

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<sup>21</sup> Ibid, p.9, lines 17-24.

<sup>22</sup> Dr. Ankum Direct, January 30, 2004, p. 39, lines 10-16.

<sup>23</sup> Ibid, p. 40, lines 11-18.

<sup>24</sup> Ibid, p. 41, lines 15-20.

<sup>25</sup> Ibid, p. 43, line 19-p.44, line 7.

<sup>26</sup> Ibid, p.44, lines 9-14.



Telecom of Kansas, Inc. (Birch), TCG Kansas City, Inc. (TCG), and Z-Tel Communications, Inc. (Z-Tel). Mr. Gillan suggested that analysis of the geographic market should begin by using the existing LATAs as the market areas. He states that LATAs are generally large enough to be representative of the mass market, are sufficiently large to avoid misinterpretation of small pockets of competition for competition generally, and are likely to reflect the conditions affecting the availability of telecommunications in the state overall.<sup>27</sup> However, Mr. Gillan warns that eliminating switching as a UNE in a portion of the state will have effects on the amount of competition remaining in other areas of the state. Mr. Gillan also suggests that consideration should be given to whether CLECs are targeting a particular subset of mass market customers when providing service within the geographic market.

13. The Citizens' Utility Ratepayer Board (CURB) suggests that use of the MSA as the geographic market definition is overly broad. Mr. Bion C. Ostrander, witness for CURB, suggests that the criteria presented in the *Triennial Review Order* call for a more narrowly defined geographic market. Mr. Ostrander points out that MSAs contain geographic areas with vastly different economic conditions.<sup>28</sup> He provides economic and demographic data for each of the counties in the Kansas City MSA and the Wichita MSA. He indicates that those data reveal that the MSAs are not a homogeneous market. In the Kansas City MSA, Mr. Ostrander found that the population density varies from 946 persons per square mile to forty-nine persons per square mile on a county basis.<sup>29</sup> In the Wichita MSA the population density varies from 453 persons per square mile to twenty-two persons per square mile on a county basis.<sup>30</sup> He concludes that the MSAs include very urban and very rural areas. Mr. Ostrander found that the median household income in Johnson County, in the Kansas City MSA, is \$61,455 but only \$33,784 in Wyandotte County, which is in the Kansas City MSA.<sup>31</sup> The income levels in the Wichita MSA are less disparate. Mr. Ostrander asserts that there is a wide variation in population density and that the cost of providing telecommunications services varies with population density. Therefore, a geographic area with varying levels of population density may not be an appropriate definition of the geographic market. Mr. Ostrander states that SWBT has not provided sufficient justification for using the MSA as the geographic market. CURB supports a geographic market definition that includes a wire center or cluster of wire centers.<sup>32</sup> Mr. Ostrander also suggests that further segmentation of the market between residential and small business customers is necessary to best distinguish product and geographic markets.<sup>33</sup>

14. The KCC Staff suggested that a relatively narrow geographic market definition be adopted, based upon small clusters of wire centers having homogeneous characteristics. Dr. Ben Johnson provided testimony on behalf of the KCC Staff indicating that MSAs are too large and heterogeneous to be considered the geographic market for

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<sup>27</sup> Mr. Gillan Direct, January 30, 2004, p. 28, line 17-p. 29, line 6.

<sup>28</sup> Mr. Ostrander Direct, January 30, 2004, p. 16, lines 11-16.

<sup>29</sup> Ibid, p. 17, lines 22-24.

<sup>30</sup> Ibid, p. 17, lines 24-26.

<sup>31</sup> Ibid, p. 18, lines 2-8.

<sup>32</sup> Ibid, p. 3, lines 16-17.

<sup>33</sup> Ibid, p. 4, lines 3-5.

telecommunications services provided to mass market customers. Dr. Johnson asserts that, in Kansas the MSAs include areas that are rural in nature. While those living in the rural communities may work and shop in the metropolitan area, their dial tone is location specific and cannot be obtained from the metro area. Vastly different cost is associated with serving urban and rural areas. Vastly different potential for revenue is also associated with serving urban and rural areas. Thus, the MSA is not likely to be a definition sufficient to distinguish among markets where different findings of impairment are likely to occur.<sup>34</sup> By examining collocation activity in Kansas, Dr. Johnson finds that CLECs have only penetrated portions of the Wichita and Kansas City MSAs. Those areas where collocation has occurred tend to be in more urbanized portions of the MSAs.<sup>35</sup> Dr. Johnson also disagrees with SWBT's assertion that when CLECs consider entering a market they do so on the basis of an MSA. SWBT simplifies the entry process to a level that does not reflect that entry is composed of many decisions made over time regarding many issues.<sup>36</sup>

15. Dr. Johnson suggested that following the principles embodied by the horizontal merger guidelines of the Department of Justice and the Federal Trade Commission, that is, starting small and building up, would result in a more accurate definition of the relevant geographic market.<sup>37</sup> He suggests that analysis begin at the wire center level and build up to a larger market area if the individual wire center is too small to meet the criteria, such as the scale and scope economies, set out in the *Triennial Review Order*. Dr. Johnson analyzed data for the wire centers in the Wichita and Kansas City areas to identify homogeneous markets. Dr. Johnson grouped wire centers within the MSAs by ranking them with respect to the following factors: total number of lines, the ratio of enterprise lines (multiline and special access lines) to total lines, density (number of lines per square mile), and the number of carriers collocated at the wire center (not necessarily serving mass market customers from that collocation facility). Then rankings were combined, giving equal weight to each criterion, to develop an index value. The index value, along with the proximity of the wire centers to each other, UNE rate zones, and other factors were used to group wire centers with homogeneous characteristics to identify market areas within the Kansas City and Wichita MSAs. The market groupings for Wichita and Kansas City are shown on Schedules 1 and 2 of Mr. Johnson's testimony, attached here as Attachment B. This process led to the identification of nine geographic markets within the Wichita MSA and seven geographic markets within the Kansas City MSA.<sup>38</sup>

#### Trigger Analysis

16. SWBT determined that it would only address the self-provisioning trigger. Mr. Fleming provided the factual information regarding carriers that have deployed switches and relied upon by SWBT to determine whether CLECs are impaired without access to

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<sup>34</sup> Dr. Johnson Direct, January 30, 2004, p. 15, lines 9-10.

<sup>35</sup> Ibid, p. 20, lines 19-22 and p.21, lines 14-17.

<sup>36</sup> Ibid, p. 23, line 3-p.26, line 9.

<sup>37</sup> Ibid, p. 15, lines 15-17.

<sup>38</sup> Ibid, p.36,line 19-p.41, line 21.

unbundled local switching. However, Mr. Fleming did identify a carrier that leases a switch from an independent LEC, South Central Wireless, d/b/a SC Telecom, and included this in the trigger analysis for the Wichita MSA.<sup>39</sup> Mr. Fleming also included the cable providers: Cox Communications (“Cox”) in the analysis for the Wichita MSA and Everest Communications (“Everest”) in the analysis for the Kansas City MSA.<sup>40</sup> SWBT did not include wireless carriers in its trigger analysis but believed that wireless carriers do provide a competitive option for the mass market. Additionally, SWBT did not include in its trigger analysis the six CLECs in Kansas that it believes are using packet switches to provide local service.<sup>41</sup> Mr. Fleming identified CLECs for the trigger analysis through SWBT’s unbundled loop data and E911 database entries for CLECs’ customers. He analyzed the data by CLEC and by wire center within the MSA. Data was examined at the wire center level because that is how the data is maintained by SWBT. It was then aggregated to the MSA level. To be conservative, Mr. Fleming counted only 2-wire voice grade circuits, did not include CLECs that are known to be data only providers, and excluded any end-user with four or more loops by using address records. Additionally, Mr. Fleming did not include a CLEC that served fewer than five lines within a wire center in his application of the trigger analysis. From this, SWBT identified four CLECs serving in the Wichita MSA and five CLECs in the Kansas City MSA. See Attachment GAF Direct 8C, attached here as confidential Attachment C, which shows the number of mass market customers and the number of served wire centers by CLEC. The second page of the attachment lists the results by wire center. For Wichita the identified CLECs are Adelphia, Cox, NuVox, and South Central Wireless. For Kansas City the CLECs are AT&T, Everest, McLeod USA, NuVox, and MCI. Thus, Mr. Fleming concludes that the self-provisioning trigger was met in both the Kansas City and Wichita MSAs and SWBT should no longer be required to make unbundled local switching available at TELRIC based rates in those locations.

17. Sage did not directly address the trigger analysis. However, Mr. Crowne pointed out several issues which he believes impairs the ability of a CLEC to provide service solely through its own switch. First he suggests that the existence of IDLC make access to similar quality UNE loops problematic.<sup>42</sup> The incumbent provider must locate spare copper and move the customer’s service from the IDLC system to the copper loop. If spare copper is not available, the incumbent provider can move the customer’s service to a Universal Digital Line Carrier (UDLC) system. If neither is available, the incumbent must search for another existing customer served by a copper loop or UDLC system and transfer that customer to the IDLC system which would result in a facility becoming available for the potential CLEC customer. Mr. Crowne finds that this process is “time consuming, expensive, prone to error, and subject to customer disruption.”<sup>43</sup> Mr. Crowne also suggests that collocation of facilities is essential to the provisioning of local service through a CLEC owned switch. Mr. Crowne suggests that it is unlikely that SWBT’s central offices will be able to meet the need for collocation space if unbundled local

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<sup>39</sup> Mr. Fleming Direct, p.52, lines 9-26.

<sup>40</sup> Ibid, p. 55, lines 10-13.

<sup>41</sup> Ibid, p.57, lines 5-12.

<sup>42</sup> Mr. Crowne Direct, p. 16, lines 7-11.

<sup>43</sup> Ibid, p.17, lines 8-9.

switching is no longer available.<sup>44</sup> Finally, Mr. Crowne suggests that SWBT's current hot cut process was designed for low volume activity and will not accommodate the high volume activity associated with serving the mass market.<sup>45</sup>

18. In applying the trigger analysis, MCI suggests that Commercial Mobile Radio Service (CMRS), cable telephony and fixed wireless service providers be excluded from the analysis. Dr. Ankum states that the Commission excluded CMRS providers from the trigger analysis for several reasons. Additionally, he supports exclusion of CMRS providers because of the limited number of carriers due to spectrum limitations and because the providers do not contribute to a wholesale market for accessing customer loops.<sup>46</sup> He suggests that cable telephony be excluded from the analysis because there are a limited number of cable providers within the incumbent's territory because of franchise agreements, because the providers do not contribute to a wholesale market for accessing customer loops and because the providers have not demonstrated an ability to overcome hot cut barriers.<sup>47</sup> Dr. Ankum suggests that fixed wireless has not proven to be viable on a large scale and is not comparable to the incumbent's service in terms of cost, quality or maturity.<sup>48</sup> Dr. Ankum recommends that SWBT bear the burden of proof in demonstrating that intermodal alternatives it proposes for the trigger analysis satisfy the "comparable in cost, quality and maturity" criteria set out in the *Triennial Review Order*. He also recommends that any carrier included in the trigger analysis should offer services to most customers within the defined market area and that the carrier have enough mass market customers to establish that it has overcome the hot cut barrier to entry. Dr. Ankum would eliminate from the trigger analysis those CLECs that do not serve residential customers and those CLECs that do not serve customers who are served by the incumbent through fiber feeder and IDLC.<sup>49</sup> He suggests that if a carrier is serving small business customers but not residential customers through its own switch, there is some meaningful economic or operational difference in serving those types of customers. Regarding the IDLC issue, he states that the industry has been struggling with this issue but has not found a solution for offering a loop comparable to the IDLC facilities that a CLEC can use to provision service with its own switch. Dr. Ankum does not apply the trigger analysis to Kansas specific data. He believes that SWBT has the burden of proof for this analysis.

19. On behalf of AT&T, Birch, TCG and Z-Tel, Mr. Gillan suggests that before a CLEC can be included in the trigger analysis, it must meet several criteria. He states that the CLEC must use its switch to serve mass market customers; it must be actively providing voice service to mass market customers, including residential customers; it should provide service with similar "ubiquity" to UNE-P provisioning in the market area; it should rely on the incumbent's loops to provide service; it cannot be affiliated with the incumbent or other self-provisioning CLECs; and, it should be evidence of sustainable

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<sup>44</sup> Ibid, p. 20, lines 16-20.

<sup>45</sup> Ibid, p. 21, lines 13-14.

<sup>46</sup> Dr. Ankum Direct, p. 52, lines 9-15.

<sup>47</sup> Ibid, p. 52, line 18-p.53, line 7.

<sup>48</sup> Ibid, p.53, lines 10-12.

<sup>49</sup> Ibid, p.66, lines 4-8.

broad mass market competitive alternatives in the market.<sup>50</sup> Mr. Gillan states that he cannot provide a thorough trigger analysis until receiving more data from SWBT. However, his preliminary analysis indicated that many of the CLECs identified by SWBT in its binding statement do not meet the criteria to be included in the trigger analysis. Mr. Gillan finds that about half of the CLECs identified by SWBT serve the enterprise market rather than the mass market. For those serving the mass market, Mr. Gillan finds that several are not actively serving the market.<sup>51</sup> From his limited review of the data, Mr. Gillan suggests that the data does not support SWBT's claim that there are three self-provisioning CLECs in either the Kansas City or Wichita MSAs.

20. CURB had not completed its trigger analysis at the time direct testimony was filed.

21. In its preliminary trigger analysis, based only on information provided by SWBT in response to data requests, KCC Staff found that the self-provisioning trigger appeared to be met in the most densely populated areas in the Kansas City and Wichita MSAs. Those densely populated areas were the geographic areas designated as Market 1 by Dr. Johnson. The Market 1 area in the Wichita MSA includes the following wire centers represented by their 8-digit CLLI codes: WCHTKS47, WCHTKSAM, WCHTKSCE, WCHTKSNW, WCHTKSOL, WCHTKSTE. The Market 1 area in the Kansas City MSA includes the following wire centers represented by their 8-digit CLLI codes: KSCYKS10, KSCYKSCB, KSCYKSJO, KSCYKSLE, KSCYKSNA. In its preliminary analysis, KCC Staff did not include the cable companies offering service in parts of Wichita and Kansas City, and no in depth evaluation was made of the CLECs listed by SWBT. Additionally, KCC Staff indicated that before a final analyses was prepared it would need to review the discovery responses of the CLECs.

#### Cut-off or Cross-over Between the Mass Market and the Enterprise Market

22. SWBT believes the appropriate cut-off for the mass market is three lines per customer.<sup>52</sup> SWBT states that the Kansas City MSA is included in the top fifty MSAs and the Commission has determined that for those fifty MSAs, if the switching carve-out was in place, the appropriate cut-off is four lines. SWBT contends that this is also appropriate for those MSAs not included in the top fifty, such as the Wichita MSA. Mr. Fleming states that the Commission had previously determined that all residential customers would be captured in this cut-off and that businesses with three or fewer lines are more likely to share characteristics with residential customers than larger business customers. He states that these criteria would be true for MSAs of all sizes. Mr. Fleming points out that CLECs could gain additional revenue by serving a business through a DS1 rather than multiple DS-0s because of the ability to combine voice and data traffic on a single, high capacity loop.<sup>53</sup> Mr. Fleming goes on to offer several examples of CLECs

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<sup>50</sup> Mr. Gillan Direct, p.38, lines 2-23.

<sup>51</sup> Ibid, p. 59, lines 1-19.

<sup>52</sup> Mr. Fleming Direct, p.40, line 23-p.41, line 5.

<sup>53</sup> Ibid, p.43, lines 16-23.

offering more sophisticated products to smaller businesses.<sup>54</sup> Mr. Fleming also finds that it is more cost-effective to serve a small business customer with a DS-1 line than with four DS0 lines if the CLEC can expect to gain at least \$78.97 per month in data revenues in UNE Zone 3, \$77.33 per month in data revenues in UNE Zone 2, or \$55.75 per month in data revenues in UNE Zone 1.<sup>55</sup>

23. Sage defines the mass market customer such as a residential or small business customer served by a DS-0, analog, voice grade loop.<sup>56</sup>

24. Dr. Ankum, on behalf of MCI, could not recommend a cut off level at the time direct testimony was filed. He indicated that he needed to review SWBT's initial testimony and responses to data requests.<sup>57</sup>

25. On behalf of AT&T and TCG, Mr. John F. Finnegan provided testimony regarding the cut-off point between the mass market and the enterprise market. He suggests that the proper cut-off point is thirteen lines.<sup>58</sup> He made this determination by examining "... where it made economic sense for a [CLEC] to serve a multi-line plain old telephone service ("POTS") customer using a DS-1-based service."<sup>59</sup> Mr. Finnegan states that he identified all the costs that are incurred to serve a multi-line POTS customer with a DS-1 and divided the total cost by the cost of a UNE-P line.<sup>60</sup> Mr. Finnegan suggests that the Commission relied on minimal evidence in reaching its conclusion that the cut-off for the mass market would be three lines. At that time, Mr. Finnegan suggests that the Commission did not appreciate the fact that most self-provisioned switches are used to serve the enterprise market. Regardless, Mr. Finnegan points out that SWBT did not apply the four line limit in the Kansas portion of the Kansas City MSA. Because the carve-out was not applied, he suggests that it need not be considered in determining the proper cut-off.<sup>61</sup>

26. On behalf of Birch and Z-Tel, Mr. Gillan suggests that the cut-off be determined using the following formula:

$$\text{Crossover} = \frac{(\text{CPE} + \text{UNE DS-1})}{\text{UNE Loop}}$$

Where: CPE includes the cost of equipment and inside-wire changes at the customer premises to make the customer's analog service compatible with a DS-1 loop, UNE DS-1 and UNE Loop includes the relevant cost of leasing the facility from the incumbent.<sup>62</sup> However, Mr. Gillan acknowledges that the formula does not take into account many factors that would explain the appropriate cut-off. Ultimately, Mr. Gillan concludes that the cut-off between the mass market and the enterprise market occurs when it makes

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<sup>54</sup> Ibid, p. 44, line 18 – p. 47, line 8.

<sup>55</sup> Ibid, p. 49, line 19–p. 50, line 3.

<sup>56</sup> Mr. McCausland Direct, p. 10, lines 9–10.

<sup>57</sup> Dr. Ankum Direct, p. 71, lines 16–20.

<sup>58</sup> Mr. Finnegan Direct, p. 3, line 4.

<sup>59</sup> Ibid, p. 3, lines 6–8.

<sup>60</sup> Ibid, p. 3, lines 8–12.

<sup>61</sup> Ibid, p. 13, lines 22–25.

<sup>62</sup> Mr. Gillan Direct, p. 22, line 16–p. 23, line 2.

economic sense to serve a multi-line customer with a DS-1 loop. He does not provide a specific number of loops.

27. CURB suggests that establishing a cut-off that is greater than four lines or that is too high will increase the number of customers considered to be in the mass market and decrease the number of customers in the enterprise market. Thus, there will be a greater likelihood of a finding of non-impairment for the mass market.<sup>63</sup> At the time direct testimony was filed, CURB had not completed its analysis of this issue and did not have a specific recommendation for the cut-off.

28. KCC Staff did not have a specific recommendation for the cut-off point but identified risks associated with setting the level either too high or too low. A cut-off point that is too high will increase the number of customers in the mass market and reduce the number of customers in the enterprise market. This increases the chance that there will be a finding of no impairment in the mass market.<sup>64</sup>

#### Batch Hot Cut Process

29. Parties to the Kansas proceeding agreed that they would participate in a regional collaborative process to develop a batch hot cut process that was facilitated by the Texas Public Utility Commission. The parties also agreed that if issues were not resolved during the collaborative process or if Kansas-specific issues needed to be addressed, the issues would be presented in the mass market switching track of the proceeding. On November 7, 2003, the first collaborative meeting was held. There, SWBT indicated that its goal was to establish a uniform batch hot cut process across the thirteen states that it serves as the incumbent provider. An issue tracking matrix was to be developed by December 15, 2003. SWBT filed its Final Batch Hot Cut Process proposal on December 17, 2003. Parties were permitted to file responses, in Texas, on January 5, 2004. On January 9, 2004, the Staff of the Texas Public Utility Commission filed a Memorandum recommending that the collaborative process be abated and that a contested case be initiated to allow the Texas Public Utility Commission to approve a batch hot cut process. In light of the dissolution of the collaborative process, KCC Staff recommended to the KCC that testimony regarding the batch hot cut process be filed on January 30, 2004. That schedule was later modified to provide for SWBT filing a final batch hot cut process, including cost and price information, cost studies, and performance measurements on January 30, 2004. Other parties could file general testimony on the batch hot cut process on that date if they wished. Parties would then file simultaneous direct testimony on March 5, 2004 and simultaneous reply testimony on March 29, 2004. However, the Commission suspended the procedural schedule on March 3, 2004 in response to the decision of the United States Court of Appeals for the District of Columbia regarding the *Triennial Review Order*.

30. SWBT developed its preliminary batch hot cut proposal based upon the requirements and objectives outlined in the *Triennial Review Order*. As discussed during

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<sup>63</sup> Mr. Ostrander Direct, p. 26, lines 20–26.

<sup>64</sup> Dr. Johnson Direct, p.33, lines 2-22.

the collaborative workshops, SWBT evaluated its current hot cut processes, anticipated future volumes and investigated whether the processes could be improved to make them more efficient, less costly, and better suited to handle the volumes anticipated where there is a finding of no impairment without access to unbundled local switching. SWBT did not finalize its batch hot cut proposal until after the collaborative sessions concluded. SWBT indicates that it evaluated the input from the CLECs and modified its initial proposal. SWBT believes the end result is a batch hot cut proposal that is tailored to better meet the desires expressed by the CLECs.

31. SWBT's batch hot cut process can be described through three options:

- a) The Enhanced Daily Process
- b) The Defined Batch Process
- b) The Bulk Project Process

32. SWBT states that the Enhanced Daily Process is designed to support CLECs' acquisition of new customers.<sup>65</sup> As such, it has the shortest intervals and does not include any limitations on the number of orders a CLEC may submit. The Enhanced Daily Process applies to all loops other than for "embedded base conversions." The Enhanced Daily Process has no daily line quantity limits, however, end user "project" limits will apply (varies by region). This process is available for both frame due time and coordinated hot cuts, between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. Loops provisioned over IDLC can be included within normal business hours. Existing standard provisioning intervals for stand-alone, voice-grade loops and existing performance standards would continue to apply.<sup>66</sup>

33. SWBT states that the primary purpose of the Defined Batch Process is to allow CLECs to transition their embedded base of UNE-P customers to the CLEC's own switch.<sup>67</sup> The Defined Batch Process is available for transitioning a CLEC's embedded base of resold and UNE-P mass market customers (and enterprise customers with up to 19 lines) to the same CLEC's own switch. CLECs also have the option of utilizing the Defined Batch Process for new customer acquisitions of mass market end user customers (and enterprise customers with up to 19 lines) currently obtaining voice grade service only as a SWBT retail customer or as another CLEC's resold or UNE-P customer. In evaluating the "batch size" for the Defined Batch Process, SWBT assumed that 100 percent of existing UNE-P customers would migrate to UNE-L under one of two potential migration strategies: either a constant migration over the Commission's 27 month transition timetable or a more accelerated rate of 200 per day, per central office. Defined Batch Process line quantity limits are one to 100 lines per day, per CLEC, per central office. The maximum number of Defined Batch Process hot cuts will be 200 lines

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<sup>65</sup> SWBT's Final Batch Hot Cut Process Proposal, December 17, 2003, Attachment 1, p.2.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.



per central office per day, between 6:00 a.m. and 12:00 a.m., for all CLECs, (e.g., two CLECs requesting 100 each; or four CLECs requesting 50 each, etc.)<sup>68</sup> CLECs that use the Defined Batch Process may choose between the frame due time process and the coordinated hot cut process. CLECs may also choose a provisioning time frame that suits their needs:

The frame due time option is available between 8:00 a.m. and 5:00 p.m., Monday through Friday (normal business hours) and between 6:00 a.m. and 8:00 a.m., Monday through Friday [(expanded hours)].<sup>69</sup>

The coordinated hot cut option is available between 8:00 a.m. and 5:00 p.m., Monday through Friday (normal business hours), between 6:00 a.m. and 8:00 a.m. and 5:00 p.m. to 12:00 a.m., Monday through Friday, and between 8:00 a.m. and 5:00 p.m., Saturday [(expanded hours)].<sup>70</sup>

Loops currently provisioned over IDLC that can be migrated to an all copper loop or UDLC may be included in the Defined Batch Process requests during normal business hours. CLECs will be permitted to chose either AM or PM. Additionally, under the Defined Batch Process, a single CLEC may submit orders for one -100 lines per wire center per day. However, no more than 200 total lines (for all CLECs combined) can be scheduled for hot cuts under the Defined Batch Process for a single wire center on any given day.<sup>71</sup> The standard provisioning interval for the Defined Batch process is thirteen business days. SWBT states that this interval allows the company to manage its work force more effectively and therefore minimize the cost of performing the requested hot cuts.<sup>72</sup> SWBT states that it will be able to perform twenty hot cuts per hour during normal business hours and twenty-five hot cuts per hour during expanded hours.<sup>73</sup>

34. The Bulk Project Process provides CLECs with an option for scheduling large volumes of hot cuts. SWBT states that the Bulk Project Process may be used for both new acquisitions and embedded base customers. Loops that are currently provisioned over IDLC may also be included in Bulk Project Process requests during normal business hours.<sup>74</sup> The Bulk Project Process is available for projects of twenty or more lines. CLECs may use the Bulk Project offering in a single wire center or multiple wire centers. The intervals for hot cuts under the Bulk Project Process will be negotiated.<sup>75</sup>

35. SWBT also provided its analysis of the incremental hot cut demand that it expects and a summary of the OSS changes that would be associated with the final batch hot cut proposal. SWBT anticipates daily UNE-L volumes in Kansas, based on highest number of UNE-P orders received in one month at the central office level, to be sixty-

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<sup>68</sup> Ibid, p.3.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid, p.4.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid, p.4-5.

seven per day. The company expects that 10,635 UNE-P loops will need to be converted to UNE-L over twenty-seven months with twenty-one working days in a month, or that eighteen conversions per day will be required to transition the existing loops. Thus, SWBT will need to be able to conduct eighty-five hot cuts per day or 267 hot cuts per day if it accelerates the transition process.<sup>76</sup> SBC verbally asserted during the collaborative process that these volumes were well within the capacity of their existing resources to handle and that they have the flexibility to move personnel between offices in order to handle unanticipated peaks. SWBT contends that the new OSS processes will enhance the pre-ordering, ordering and provisioning interfaces. CLECs will be provided with more real time information and a more automated ordering process.<sup>77</sup> The details of the OSS process changes had not been finalized at the time of SWBT's filing.

36. On January 30, 2004, SWBT filed its proposal for performance measurements. SWBT proposed changes to six existing performance measures related to the batch hot cut process. Those are: Percent Installations Completed within the Customer Requested Due Date for LNP with Loop, Percentage of Premature Disconnects (Coordinated Cutovers), Coordinated Cutover LNP with Loop Provisioning Interval, Percent Provisioning Trouble Reports, Percentage of Provisioning Trouble Report Completed in < 8 operational hours, and the Combined Outage Percentage of CHC/FDT with Loop Lines Conversions. While many changes were not substantive, there were some changes to the business rules that may be controversial.

37. On January 30, 2004, SWBT filed its proposed rates and supporting cost study. The rates and cost study were revised on February 6, 2004, and again on February 17, 2004. The revisions resulted in reductions in the proposed rates. For the Enhanced Daily Process, SWBT proposes that frame due time cuts are available at \$45.95, coordinated hot cuts are available at \$49.13, and IDLC hot cuts can be performed for \$112.52.<sup>78</sup> For the Defined Batch Process, frame due time cuts can be performed for \$34.55 (normal business hours) or \$35.42 (expanded hours). Coordinated hot cuts are available at \$34.89 (normal business hours) or \$35.71 (expanded hours). The IDLC hot cuts are available for \$109.73.<sup>79</sup> For the Bulk Project Process, frame due time cuts can be performed for \$34.52 (basic hours), \$35.39 (expanded hours) or \$39.19 (premium hours). The coordinated hot cuts can be performed for \$34.86 (basic hours), \$35.67 (expanded hours), and \$39.56 (premium hours). The IDLC option can be performed for \$109.70.<sup>80</sup>

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<sup>76</sup> Ibid, Attachment 2, Kansas.

<sup>77</sup> Ibid, Attachment 3, p.1.

<sup>78</sup> SWBT's 2<sup>nd</sup> Revised Batch Cut Pricing Information and Cost Study, February 17, 2004, revised Attachment B.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

38. Sage provided limited testimony on the general batch hot cut process. Four of Mr. Crowne's eight 'key findings' relate to the batch hot cut issue. He states the existence of IDLC equipment and derived loops associated with a wire center must be considered. He believes that currently, CLECs would be relegated to copper loops and UDLC, which he suggests offer little chance of providing viable competition. Mr. Crowne states that substituting decommissioned copper in place of IDLC loops is unacceptable because of the service quality degradation at the time of the transfer of service. He claims that substituting UNE-L for UNE-P places unacceptable degradation on the signal quality and that there are many obstacles for achieving an efficient and automated hot cut process. Finally, Mr. Crowne states that the hot cut process should take into account the fact that a large quantity of daily telephone service conversions that may occur. He believes that currently, only the UNE-P process is capable of handling such volumes.<sup>81</sup>

39. Covad Communications Company (Covad) provides testimony regarding several issues related to the batch hot cut process.<sup>82</sup> Ms. Catherine Boone, witness for Covad, states that Covad has identified operational and OSS problems related to SWBT's batch hot cut process. Ms. Boone introduces the term "run-time hot cut process" referring to the one-customer-at-a-time, everyday migration that happens when one switch-based carrier wins a customer from another switched-based carrier.<sup>83</sup> She asserts that SWBT does not have operations and OSS to support line splitting over UNE-L and SWBT has indicated that the company will not include voice plus data loops in a run-time hot cut process. She believes that CLECs are impaired without access to line splitting in conjunction with UNE-L offerings.<sup>84</sup> Thus, Ms. Boone believes that SWBT should be required to continue to provide unbundled access to ILEC switching in line splitting arrangements until SWBT develops an effective and efficient run-time hot cut process for voice plus data loops.<sup>85</sup> Ms. Boone maintains that the inability to migrate voice plus data loops as part of the hot cut process will cause severe disruptions for customers and harm competition.<sup>86</sup> She asserts that, "[b]ecause [SWBT] is unwilling to migrate voice plus data loops in a run-time process, [SWBT] will require that the DSL service on the loop be disconnected while the voice portion of the customer's loop is migrated to a CLEC switch."<sup>87</sup> This will cause excessive out of service periods for DSL service. However, Ms. Boone claims that SWBT will choose the most efficient technical configuration for its own operations. That is, it will provide cross connects for line shared loops to itself that it refuses to provide to CLECs, thereby discriminating against CLECs.<sup>88</sup> CLECs are forced to use the more expensive cage-to-cage cabling. Ms. Boone states that CLECs need access to accurate customer service record and loop information on a real-time

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<sup>81</sup> Mr. Crowne Direct, p. 4, lines 3-18.

<sup>82</sup> SWBT filed a Motion to strike the testimony of Ms. Boone. The KCC did not strike the testimony, but indicated that it may be more appropriate for a proceeding which was then open to discuss issues related to line sharing and line splitting.

<sup>83</sup> Ms. Boone Direct, January 30, 2004, p.19, lines 3- 12.

<sup>84</sup> Ibid, p. 6-12.

<sup>85</sup> Ibid, p.4, lines 10-13.

<sup>86</sup> Ibid, p.15-17.

<sup>87</sup> Ibid, p.16, lines 7-9.

<sup>88</sup> Ibid, p.18, lines 10-14.

mechanized, flow-through and integrated basis. Additionally CLECs need a single local service request process for hot cuts of *split* lines. Ms. Boone believes that SWBT's processes are deficient in these areas and do not adequately meet the CLECs' needs.<sup>89</sup> Ms. Boone raises concerns relating to lines served by Digital Loop Carrier (DLC) systems and recommends that SWBT perform a "pre-engineering check" before every hot cut order to determine whether the customer is being served by a DLC. For those who are being served via DLCs, she suggests that SWBT have a process in place for rapidly migrating the customer to a copper loop. She states that this process should be supported by mechanized, flow-through OSS.<sup>90</sup> Ms. Boone also provided a considerable amount of testimony directed to the shortcomings of SWBT's current process for migrating UNE-P to line splitting and states that those problems must be avoided in development of the new batch hot cut processes.<sup>91</sup>

40. Birch states that the batch hot cut process should be designed to achieve the results currently realized when transitioning a customer to a UNE-P based service. That is, the customer should not perceive a difference between the transition it experienced when switching to a UNE-P provider and the transition it will experience when it switches to a UNE-L provider.<sup>92</sup> Mr. Tad Jerret Sauder, witness for Birch, emphasizes that the SWBT proposal is not a collaborative proposal. The comments provided by CLECs during the collaborative process were only included in SWBT's final proposal if the company agreed with the CLEC suggestion. Many of the CLEC suggestions, including many of Birch's suggestions were not incorporated into the SWBT proposal.<sup>93</sup> Mr. Sauder identified four major areas of concern with the SWBT proposal that was filed with the KCC. Mr. Sauder, expressed concern with the proposal SWBT filed because it is largely a manual "lift and lay" process. Based on Birch's previous experiences, it will be very important for Birch to closely manage SWBT's actions to ensure minimal service disruption.<sup>94</sup> Mr. Sauder expressed concern with SWBT's proposed work hours in which the three hot cut processes can be implemented. The Defined Batch Process allows for hot cut activity after normal business hours and would be attractive for Birch's business customers. However, it requires a 13 business day advance notification.<sup>95</sup> Mr. Sauder asserts that generally, the provisioning intervals for transitioning customers (three to thirteen days) is greater for CLECs than what SWBT's retail operations receives (often less than three days) and often involves manual handling.<sup>96</sup> Finally, Mr. Sauder suggests that in order for SWBT to scale its sub-standard manual processes to meet the CLEC demand, SWBT will need to increase its workforce in central offices.<sup>97</sup>

41. Mr. Sauder identified the following items raised by CLECs during the collaborative process that were not, in his opinion, sufficiently addressed by SWBT:

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<sup>89</sup> Ibid, p.21-26.

<sup>90</sup> Ibid, p.33-34.

<sup>91</sup> Ibid, p.38-50.

<sup>92</sup> Mr. Sauder Direct, January 30, 2004, p. 7, lines 13-15.

<sup>93</sup> Ibid, p.9, lines 3-7.

<sup>94</sup> Ibid, p.9, lines 16-23.

<sup>95</sup> Ibid, p.10, lines 1-13.

<sup>96</sup> Ibid, p. 10, lines 15-23.

<sup>97</sup> Ibid, p. 11, lines 5-10.

***Workforce/Timeliness***

Whether the order volumes can be met based on what SBC can achieve with current workforce or will additional personnel be needed (if so, how many in each CO)?

What the underlying assumptions are about how many hot cuts an SBC technician can complete in a given interval, i.e. how long does it take to pre-wire each line for a hot cut? How long to “lift and lay” for a single line hot cut?

Whether SBC conducted any time and motion studies to document its conclusions.

Whether SBC’s assumptions about the work force available to conduct DS0 level cutovers take into account other expected workload for SBC technicians, i.e. what volume of SBC retail winback cutovers, new CLEC and SBC retail installations, or wireless LNP conversions does SBC anticipate must be handled by the same technicians responsible for DS0 cutovers?

What SBC’s assumptions are about the need for project management personnel to oversee some or all of the batch hot cuts? Are the project management assumptions affected by the use of mechanized versus manual ordering process? Are sufficient project management personnel available to meet projected needs?

What assumptions are underlying the “13 day scheduling” requirement for “defined batch” hot cuts? Can the 13 days be reduced if the ordering process is mechanized, or is the 13 day period subject to workforce scheduling constraints?

***Integrated Digital Loop Carrier (IDLC) Facilities***

How many lines (by wire center) are currently served [by] an IDLC configuration in Kansas?

SBC’s proposal indicates a new pre-order tool (or modification to an existing tool) to validate when loops are served by IDLC. If a CLEC UNE-P customer is served on IDLC and the CLEC requests a cut over to a non-ILEC switch, is the CLEC required to order a new loop to serve the customer? What are SBC’s assumptions about how the new loop is provisioned, and how long [does] that provisioning take?

***Operations Support Systems (OSS)***

SBC's proposal does not adequately detail which parts of the batch hot cut process will be automated (i.e. do not require manual intervention). It is clear from the proposal that the central office functions would remain manual processes, but the proposal does not indicate what other processes are manual or automated.

SBC's proposal also includes development of functionalities that do not currently exist. If this [Kansas] Commission ultimately adopts these functionalities, they need to be developed and tested by a party other than SBC. SBC's internal OSS testing has been problematic in the past.

***Miscellaneous Issues***

SBC's proposal does not include CLEC to CLEC migrations. The adopted batch hot cut process should include this scenario. SBC has only provided legal opinions as to why CLEC to CLEC migrations should not be included and has not included any operational issues that would preclude this scenario.

SBC's proposal includes a number of activation procedures described as "trap and trace" that, while based on a manual process performed by an SBC technician at the time of the hot cut, provides for the possible automation to a portion of the hot cut process.

SBC has not developed a robust "throw back" process that would quickly restore service to end users if there were problems encountered during a hot cut. In many instances, SBC would require the CLEC to submit an LSR to restore service to an end user. This SBC process would take many hours before an end user's service would be restored. In Birch's experience, the end user could call SBC retail to have SBC retail service restored long before Birch could get service restored by submitting new LSRs.

The new Batch Hot Cut process would require new Interconnection Agreement terms and conditions (including new cost) to be implemented. The SBC proposal does not include any proposed terms and conditions in its proposal.<sup>98</sup>

42. AT&T and TCG state that the *Triennial Review Order* acknowledges that the absence of a batch hot cut process is a barrier to loop provisioning. Mr. Mark David Van De Water, witness for AT&T and TCG, indicates that due to significant cost and

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<sup>98</sup> Ibid, p.13, line 11-p.16, line 14.

operations provisioning problems, AT&T no longer uses UNE-L when acquiring new customers.<sup>99</sup> Mr. Van De Water indicates concern that service quality may decline as CLECs are required to provision service using UNE-L, because the hot cut process is manual and any time a process requires human intervention and manual steps, there is a greater opportunity for failures to occur.<sup>100</sup> However, he does indicate that AT&T and SWBT were able to develop a low volume hot cut process to address the needs of AT&T but that this process is not suited for the “batch” environment envisioned by the *Triennial Review Order*.<sup>101</sup> Mr. Van De Water indicates that AT&T and TCG have six specific concerns with SWBT’s proposal.<sup>102</sup> He finds SWBT’s assumptions regarding scalability are questionable. SWBT failed to provide testing of the process and at the time, had not offered the performance metrics associated with its batch hot cut process. The pricing information reviewed did not lead him to believe that the process would be economic. SWBT’s proposal of a 13 business-day interval for provisioning loops in a batch, is not, by definition, timely. He indicates that SWBT’s process fails to account for: “(i) customers that have DSL (through line splitting or line sharing), (ii) customers that are migrated from CLEC to CLEC UNE-L to UNE-L and (iii) customers that CLECs desire to serve via EELs.”<sup>103</sup> Finally, Mr. Van De Water indicates that SWBT had not yet provided sufficient detail concerning the OSS modifications associated with its batch hot cut process. Mr. Van De Water is also concerned that customers served by IDLC systems pose a significant problem for the hot cut process. The individual customer’s loop is not readily accessible in this configuration. He suggests that individual digitized customer lines destined for a CLEC could be ‘mapped’ and ‘groomed’ to a DS-1 and routed to a particular CLEC, but SWBT has refused to offer this option.<sup>104</sup> With respect to line splitting, AT&T asserts that the only practical process available in SWBT territory by which CLECs and Data LECs can implement UNE-L line splitting is through the use of pre-wired cage-to-cage cabling between their respective collocations to enable interconnection of the necessary equipments. This arrangement is more operationally complex, riskier, more costly, and has the potential for significant customer service impact.<sup>105</sup> AT&T is also concerned that requiring use of UNE-L will require new trunking and collocation space and these factors must be considered in addition to the cost of the hot cut process. Mr. Van De Water maintains that in order to establish and sustain competitively unconstrained migrations of customers among all carriers, an electronic process for loop provisioning must be made available which is as easy, efficient, and reliable as the UNE-P provisioning process for local customers and the Primary Interexchange Carrier (PIC) change methodology in place for long distance.<sup>106</sup>

43. MCI identifies three primary issues regarding the batch hot cut process. Mr. Michael Starkey, witness for MCI, indicates that it is important for SWBT to properly scale its manual hot cut process to accommodate future demand, that a lack of hot cut alternatives for

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<sup>99</sup> Mr. Van de Water Direct, January 30, 2004, p. 8, lines 1-3.

<sup>100</sup> Ibid, p. 16, lines 20-22.

<sup>101</sup> Ibid, p. 17, line 14-p. 18, line 12.

<sup>102</sup> Ibid, p. 19-20.

<sup>103</sup> Ibid, p. 19, lines 14-16.

<sup>104</sup> Ibid, p. 32, line 4-p.33, line12.

<sup>105</sup> Ibid, p. 33, line 18-p.35, line 12.

<sup>106</sup> Ibid, p. 43, lines 15-18.

CLECs relying on EELs is problematic, and SWBT must address CLEC to CLEC migrations and migrations involving line splitting. Regarding his concern about the scalability of SWBT's batch hot cut process, Mr. Starkey believes that SWBT underestimates the number of hot cuts it will need to perform in a UNE-L environment. Thus, he presents a model for estimating the volume of "steady state" or business as usual hot cuts over the twenty-seven months allotted for transitioning. His estimated volumes are significantly higher than the current number of hot cuts provisioned by SWBT – 17,000 per month compared to the current sixty-five per month.<sup>107</sup> Mr. Starkey asserts that SWBT has refused to include CLEC to CLEC migration in its hot cut process. He questions whether SWBT has two different procedures to apply to its own retail services for new customers and winback customers. He suggests that this would lead to discriminatory treatment and impairs MCI's ability to compete.<sup>108</sup> Mr. Starkey asserts that SWBT refuses to include line sharing and/or line splitting arrangements in its hot cut process. He claims that this will allow SWBT to create an environment in which it is much more difficult and expensive to serve data customers and reduce the potential revenues a CLEC could achieve by offering both voice and data services.<sup>109</sup> Regarding SWBT's refusal to develop processes whereby a competitor can request that a UNE loop be hot cut to an EEL in central offices where the CLEC is not collocated, Mr. Starkey indicates that this is problematic in that it will require a CLEC to be collocated in every central office in which it provides service to customers. Mr. Starkey suggests that his concern regarding hot cuts involving customers located on IDLC systems could be addressed through a technology known as GR-303 or by use of a "side door port."<sup>110</sup> He suggests that the IDLC issue is a very real concern as deployment of IDLC systems is significant and on the increase for serving large numbers of residential and small business customers.<sup>111</sup> Finally, Mr. Starkey discusses the need and desirability for "concentrated EELs." This is an arrangement utilizing next generation Digital Loop Carrier architecture along with a GR-303 feature. As envisioned, the RT would be placed in an ILEC's central office and the mate terminal would be placed in the CLEC's office. With this arrangement individual subscriber lines would be concentrated onto one or more interoffice DS-1s.<sup>112</sup>

44. Mr. Rick L. Whisamore, witness for MCI, and Mr. Steven E. Turner, witness for AT&T, TCG, and Birch, provide testimony regarding whether CLECs can overcome economic and operational impairment without access to switches. Mr. Whisamore states that the following must occur:

- Develop standard processes and procedures to obtain and share customer records;
- Assure CLECs that loop information databases are accurate and current;
- Develop processes for handling trouble that occurs with switching providers;
- Ensure E911 changes occur in sequence and occur efficiently;
- Develop number portability process that can address mass market volumes;
- Improve the directory listing process; and,

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<sup>107</sup> Mr. Starkey Direct, January 30, 2004, p. 20-24.

<sup>108</sup> Ibid, p. 25-26.

<sup>109</sup> Ibid, p.26, line 568-p.28, line 604.

<sup>110</sup> Ibid, p.39, line 898-p.45, line 1040.

<sup>111</sup> Ibid, p.45, line 1042-p.48, line 1108.

<sup>112</sup> Ibid, p. 55-58.



Ensure that the caller name and line information databases are accessible and contain minimal inaccuracies.<sup>113</sup>

Mr. Whisamore also indicates that churn is a significant issue to be considered.<sup>114</sup> Mr. Turner provides testimony regarding network architecture issues that impact the finding of impairment and a summary of the economic cost impairment that would occur if a CLEC was forced to rely on UNE-L as a strategy for serving the mass market.<sup>115</sup> Mr. Turner finds that there are four significant structural differences between the CLEC and the incumbent. They are:

A CLEC must install and maintain a “backhaul” network to connect its switch to incumbent loops whereas the incumbent does not need a backhaul network;

A CLEC must be able to aggregate traffic from many locations to achieve the switch economies of scale comparable to the incumbent;

The hot cut process is inferior to the process used to effect primary interexchange carrier changes.

IDLC arrangements may prevent a CLEC from serving a segment of retail customers.<sup>116</sup>

Regarding the cost to serve a customer in an UNE-L environment, Mr. Turner finds that in the two MSAs identified by SWBT, a CLEC’s cost disadvantage would be approximately \$12.14 per line per month.<sup>117</sup>

### **Impairment Without Access to Unbundled Dedicated Transport and DS-1, DS-3 and Dark Fiber Local Loops**

45. On January 12, 2004, SWBT filed its *Identification of Final Positions on Dedicated Transport and DS-1, DS-3, and Dark Fiber Local Loops*. SWBT identified eighteen transport routes in its filing. For each route, SWBT believes the self-provisioning trigger and/or the competitive wholesale facilities trigger is met for all levels of transport (i.e., DS-1, DS-3 and dark fiber); however, in the event the KCC determined neither trigger is met, SWBT intended to assert that the potential deployment test is met for these routes.<sup>118</sup> Please see confidential Attachment D for specific route information that was filed by SWBT.<sup>119</sup> SWBT identified twenty-four locations where it believes CLECs are not impaired without unbundled access to enterprise loops. For each location, SWBT believes the self-provisioning trigger and/or the competitive wholesale facilities trigger is met for DS-1, DS-3 and dark fiber local loops. SWBT did not intend to pursue a potential deployment case for loops.<sup>120</sup> See confidential Attachment E for specific loop

<sup>113</sup> Mr. Whisamore Direct, January 30, 2004, p.6, line 1-p. 7, line 14.

<sup>114</sup> Ibid, p.24, line 11- p.27, line 11.

<sup>115</sup> Mr. Turner Direct, January 30, 2004, p.2, lines 14-18.

<sup>116</sup> Ibid, p.6, line21-p.8, line7.

<sup>117</sup> Ibid, p.36,line 4-p.42, line 2.

<sup>118</sup> Southwestern Bell Telephone, L.P.’s Identification of Final Position on Dedicated Transport and DS-1, DS-3, and Dark Fiber Local Loops, January 12, 2004, ¶ 9.

<sup>119</sup> Ibid, Attachment A.

<sup>120</sup> Ibid, ¶ 11.

locations that was filed by SWBT.<sup>121</sup> A summary of the analysis and data provided by the parties in direct testimony is provided for the Commission's review.

Self-provisioning Trigger:

46. Ms. Rebecca L. Sparks provided testimony supporting SWBT's loop and transport claims. SWBT began its self-provisioning transport trigger analysis by identifying those SWBT central offices into which competing carriers have extended their fiber transport facilities through collocation. The next step was to look for situations where three or more competing carriers have deployed such collocation arrangements in a "pair" of SWBT central offices (e.g., central offices "A" and "Z," which identify the end points of a transport "route.")<sup>122</sup> Ms. Sparks suggests the self-provisioning trigger has been satisfied along at least sixteen routes. Please see Attachment RLS-6, attached here as confidential Attachment F for the specific information. Ms. Sparks believes the carriers listed on Attachment F are self-providers because some of the carriers indicated so in their discovery responses, and because the carriers have deployed a fiber-based collocation arrangement in the SWBT central office at each end of the identified transport routes. To obtain collocation at a SWBT central office, the competing carrier must either request interconnection with SWBT's network and/or request unbundled access for the purpose of providing telecommunications service. SWBT believes that any carrier that has applied for and deployed fiber-based collocation is a "self-provider," at least to some extent.<sup>123</sup> To support SWBT's position, Ms. Sparks provides excerpts from MCI and McLeod's websites that, according to SWBT, indicate that both companies are offering wholesale services. In addition, SWBT reports that in response to a data request, another carrier indicates it has some fiber facilities.<sup>124</sup> Please see Attachment G for confidential information. In addition, Ms. Sparks identified several carriers with fiber facilities in Kansas. Those are Xspedius, AT&T, Sprint, Qwest, McLeod, Everest and MCI. They provide a wide range of high-capacity, fiber-based transmission services and serve a variety of customers, including other carriers and "enterprise" business customers.<sup>125</sup>

47. SWBT used its own business records and discovery responses to reach its non-impairment conclusions.<sup>126</sup> In addition, SWBT has conducted physical verification of its collocation records. Ms. Sparks indicates that in support of its petitions seeking pricing flexibility from the FCC for special access services, SWBT physically verified fiber collocation arrangements (including the Kansas arrangements referenced previously) in late 2002. SWBT's collocation managers inspected each arrangement to verify that the collocation arrangement has been completed and the competing provider's fiber entrance facility has been pulled into the collocation arrangement.<sup>127</sup> SWBT indicates that several carriers agreed in their discovery responses, that they were collocated on both ends of the

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<sup>121</sup> Ibid, Attachment B.

<sup>122</sup> Ms. Sparks Direct, February 16, 2004, p. 18, line 17–p. 19, line 3.

<sup>123</sup> Ibid, p.25, lines 7-15.

<sup>124</sup> Ibid, p. 21, lines 6-11.

<sup>125</sup> Ibid, p. 8, lines 10-14.

<sup>126</sup> Ibid, p.25, line 20-p. 26, line 6.

<sup>127</sup> Ibid, p.26, lines 8-14.

route and had deployed their own fiber transport facilities at each end.<sup>128</sup> According to SWBT, where a carrier has deployed fiber optic transport facilities, it is capable of providing virtually any transmission level, including DS-3.<sup>129</sup> In addition, SWBT indicates that several carriers agreed that they provide transport at the DS-3 level in their discovery responses.<sup>130</sup> In addition, SWBT asserts that competing carriers have deployed spare “dark” fibers where they have placed fiber optic cables. “It simply makes engineering sense and economic sense that competing carriers’ fiber transport facilities would also contain ‘dark’ fiber, because the fiber itself is relatively inexpensive as compared to the overall cost of deploying a fiber-based system along a route.”<sup>131</sup> In addition, the discovery responses from one competing carrier confirm this principle. Please see Attachment H for the confidential information.<sup>132</sup>

48. SWBT asserts that a carrier which provides fiber transport facilities at each end of a route must not be able to claim the inability to “self-provide” dedicated transport along the route due to lack of multiplexing equipment. The FCC rule requires only (a) that the provider “has deployed its own transport facilities and is operationally ready to use those facilities” to provide dedicated transport along that route; and (b) that the competing provider’s facilities terminate either “at a collocation arrangement” or at “a similar arrangement.” A carrier’s alleged lack of multiplexing equipment does not affect the trigger, nor does it mean that the carrier has been impaired in deploying transport.<sup>133</sup> In addition, SWBT does not believe that it is possible that a carrier could have deployed fiber transport facilities at both central offices but not be able to make a connection between the two. Ms. Sparks argues,

[n]o sensible carrier would make the significant investments of deploying fiber, running the fiber all the way into an SWBT central office, and then leasing collocation space in the central office, without connecting that fiber to the rest of its network. In other words, no carrier would deploy fiber that starts at an SWBT central office and then goes nowhere—and certainly that could not be the case for all of the central offices at issue here.<sup>134</sup>

SWBT suggests that it is possible that “because of the availability of low-price UNE-transport, that some carriers may have used UNE dedicated transport as a matter of convenience rather than as a matter of ‘impairment.’”<sup>135</sup>

49. SWBT further suggests that the self-provisioning trigger could be satisfied by competitive facilities that terminate *outside* of SWBT’s premises and that do not connect to collocation arrangements at SWBT’s central offices. However, SWBT’s analysis is focused on transport facilities that terminate in collocation arrangements on SWBT’s

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<sup>128</sup> Ibid, p. 26, line 16-p. 27, line 3.

<sup>129</sup> Ibid, p. 27, lines 8-9.

<sup>130</sup> Ibid, p. 26, line 16-p.27, line 3.

<sup>131</sup> Ibid, p.28, lines 2-5.

<sup>132</sup> Ibid, p. 28, lines 8-13.

<sup>133</sup> Ibid, p. 28, line 15-p. 29, line 9.

<sup>134</sup> Ibid, p. 29, line 17-p. 30, line 6.

<sup>135</sup> Ibid, p. 31, lines 13-15.

premises, because SWBT has access to information regarding its collocation arrangements. Therefore, SWBT believes its analysis is “quite conservative.”<sup>136</sup>

50. SWBT asserts the self-provisioning trigger has been met for DS-3 and dark fiber loops. Ms. Sparks provides Attachment RLS-5, attached here as confidential Attachment K, which is a list of building addresses where SWBT believes at least two unaffiliated providers have deployed their own fiber facilities. Attachment K differs from the locations listed in SWBT’s January 12, 2004 final statement due to discovery responses received after January 12, 2004. SWBT based its conclusions on discovery responses; however, some competing providers had not responded to discovery requests or provided incomplete information at the time direct testimony was filed. Therefore, SWBT indicates it will continue to pursue the requested information and submit supplemental testimony as applicable. Some carriers confirmed in discovery responses that they provide DS-3 service to “lit” buildings or have identified competing carriers that are providing such services. In addition, competing carriers advertise that they provide DS-3 capacity. Ms. Sparks asserts that once a CLEC has deployed fiber optic loop transmission facilities to a location and has lit the fiber with equipment, those fiber facilities are capable of carrying traffic at the DS-3 capacity level and serving customers that require a DS-3 loop. SWBT concludes that competing carriers provide dark fiber because the largest initial cost of deploying fiber is not the fiber itself; carriers typically include spare “dark” facilities to allow for future growth. In addition, the discovery responses from one competing carrier confirm this principle.<sup>137</sup> Please see Attachment H for the confidential information.<sup>138</sup>

51. AT&T and TCG acknowledge that SWBT’s final statement identifies an “A” CLLI and a “Z” CLLI for each transport route and then names one or more competing transport providers, and identifies 24 “competitive high capacity loop locations.” However, Mr. Sean Minter, witness for AT&T and TCG argues that SWBT’s final statement does “little more than pose the question of whether non-impairment can be shown for these routes.”<sup>139</sup> He asserts that even if it were proved that the listed companies do have collocation arrangements at the listed SWBT central offices, that fact would only begin the self-deployment trigger analysis.<sup>140</sup>

52. Mr. Minter states that SWBT includes two routes for which it identifies only one competing transport provider and several routes for which it identifies only two alleged competing providers. The self-deployment trigger test for transport requires three competing providers; therefore, it cannot be met for any of the aforementioned routes based on the information provided by SWBT. Additionally, Mr. Minter suggests that SWBT provides no information about any actual transport facilities deployed between the “A” CLLI and the “Z” CLLI by the listed companies or the services actually being provided over those facilities. SWBT does not assert that any of the competing transport

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<sup>136</sup> Ibid, p. 32, line 16-p.33, line 6.

<sup>137</sup> Ibid, p. 12, line 17- p. 16, line 12.

<sup>138</sup> Ibid, p. 16, lines 11-14.

<sup>139</sup> Mr. Minter Direct, February 13, 2004, p. 27, lines 25-26.

<sup>140</sup> Ibid, p. 28, lines 11-15.

providers actually provide dedicated transport between the designated CLLIs. The fact that a CLEC is collocated in two ILEC central offices does not imply that the CLEC facilities provide for direct transmission of traffic between the two offices. Mr. Minter suggests that it would often be the case that each collocation arrangement is connected only to the CLEC switch. As indicated in AT&T's response to Staff's discovery, at each of the three SWBT central offices listed as "A" CLLIs by SWBT for which AT&T is identified as a trigger candidate, AT&T's collocation arrangement is connected by AT&T self-provided transport to the AT&T local switch in Kansas City, not to any SWBT central office. These entrance facilities do not qualify as dedicated transport under the TRO and they do not extend to the listed "Z" CLLIs.<sup>141</sup>

53. Mr. Minter asserts that SWBT does not identify the capacity level of any dedicated transport actually being provided, nor the capacity level at which the facilities were deployed. In addition, SWBT failed to verify or prove that the listed carriers in fact have extended any loop facilities to the listed locations; the capacity level of the facilities deployed to the location; the operational readiness of the carrier to provide such service; the nature and capacity level of any service actually being provided; and the extent to which CLEC-provided loop facilities reach throughout the entire building(s) at the location, or to which CLECs have access to the entire building(s).<sup>142</sup> Additionally, Mr. Minter indicates that SWBT does not provide any information regarding the operational readiness of any competing providers' facilities. It does not identify the capacity level of any dedicated transport actually being provided, nor, importantly, the capacity level at which the facilities were deployed. If the transport facilities deployed by AT&T between collocations in SWBT central offices and AT&T's local switch were relevant, they would not qualify for the self-deployment trigger because they were deployed at a level, far from the relevant question here—deployment of one to twelve DS-3s.<sup>143</sup> Finally, Mr. Minter asserts that the important point is to establish the criteria that must be satisfied in order for SWBT to satisfy the self-provisioning trigger for any route and to recognize that none of the required information has yet to be presented.<sup>144</sup>

54. Mr. Gary J. Ball provides testimony on behalf of MCI. He suggests that the "only effective and practical way" of demonstrating that a CLEC is operationally ready is for SWBT to provide evidence that the CLEC is actually providing service at the customer location or on the given transport route. Mr. Ball suggests this "is consistent with the FCC's requirement that evidence be provided that CLECs are *serving* customers using self-provisioned loop services, and that CLECs *offer service* between two wire centers on a given transport route."<sup>145</sup>

55. Mr. Ball indicates that SWBT identifies collocation locations in its Final Position and declares that transport routes exist between each collocation arrangement. MCI believes this approach is "clearly insufficient" because it provides no evidence that the

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<sup>141</sup> Ibid, p. 28, line 21-p. 29, line 17.

<sup>142</sup> Ibid, p. 30, line 24-p. 31, line 5.

<sup>143</sup> Ibid, p. 29, line 17-p. 30, line 3.

<sup>144</sup> Ibid, p. 30, lines 7-9.

<sup>145</sup> Mr. Ball Direct, February 16, 2004, p. 17, lines 8-10.

CLEC in question is actually offering transport service between the SWBT wire centers. In addition, SWBT did not identify capacity levels nor provide evidence that the CLEC is operationally ready. MCI asserts that there is a high probability that the equipment and fiber optics associated with a collocation arrangement are not being used to provide transport between two SWBT wire centers.<sup>146</sup> To support its trigger claim, Mr. Ball asserts that SWBT must produce additional evidence that shows (1) that the CLEC offers transport service using facilities deployed at a specific capacity level between the two wire centers, (2) that each collocation arrangement is in fact being used as an endpoint for a transport route at the specific capacity level between two wire centers, and (3) that the CLEC is “operationally ready” to provide a transport route at the specified capacity level between the two wire centers.<sup>147</sup> Mr. Ball asserts that there are two ways to demonstrate that a CLEC has “ownership” of facilities: (1) the carrier can have legal title to the facilities or (2) the carrier can have a “long-term” (i.e., 10 years or more) dark fiber indefeasible right of use (“IRU”) if (but only if) the fiber is “lit” by the qualifying carrier by attaching its own optronics to the facilities. Facilities obtained from other sources such as through special access arrangements, UNEs, capacity leases (except for long-term IRUs) and all third party provided facilities do not count as “owned facilities.”<sup>148</sup>

Wholesale Trigger:

56. SWBT asserts that the wholesale trigger has been satisfied for the eighteen transport routes identified in Attachment RLS-7, which is attached here as confidential Attachment I and includes the sixteen routes that SWBT believes satisfied the self-provisioning trigger. Thus, those routes have at least three self-providers and at least two wholesale providers.<sup>149</sup> Ms. Sparks believes that the carriers SWBT has identified are providers of wholesale transport services because of the content on the carriers’ websites and press releases regarding their wholesale service offerings. For example, Xspedius states on its website that it “offer[s] superior products and services to carriers” and MCI states that it provides “wholesale communications services you need to maximize your business potential.” In addition, one of the self-provisioning providers stated that it obtained transport from another wholesale provider. SWBT asserts that responses to data requests of two carriers are inconsistent with their claim that they do not provide wholesale transport. Please see Attachment J for the confidential information.<sup>150</sup>

57. SWBT believes the competing carriers are operationally ready to provide transport at dark fiber, DS-1 and DS-3 capacity levels along each route because it does not believe a carrier would publicly offer transport services along a route, and go to the time and expense of establishing and maintaining collocation arrangements at both ends, if it is not operationally ready to fulfill its offer.<sup>151</sup> SWBT evaluated only providers that are collocated in SWBT’s central offices. Where the competing carrier is located in SWBT’s central office, it can request a connection to other collocated carriers in that

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<sup>146</sup> Ibid, p. 15, line 21-p.16, line 8.

<sup>147</sup> Ibid, p. 16, lines 18-23.

<sup>148</sup> Ibid, p. 17, line 22-p. 18, line 8.

<sup>149</sup> Ms. Sparks Direct, p. 35, lines 1-4.

<sup>150</sup> Ibid, p. 35, line 18- p. 36, line 4.

<sup>151</sup> Ibid, p.37, lines 1-3.

same central office. Thus, Ms. Sparks believes carriers may obtain “reasonable and nondiscriminatory access” to the competing provider’s facilities through a cross-connect. Some carriers have already requested and obtained such connections in some of SWBT’s central offices in Kansas.<sup>152</sup>

58. In addition, Ms. Sparks suggests the wholesale trigger has been satisfied for unbundled DS-1 and DS-3 loops for at least nine locations. Please see Attachment RLS-5, attached here as confidential Attachment K, for identification of the locations. However, SWBT asserts that there is no reason to apply the wholesale trigger for DS-3 loops since the self-provisioning trigger is already sufficient to show non-impairment at these locations. SWBT relies on information provided in response to discovery requests and information from the carriers’ websites. Although AT&T and MCI deny in their discovery responses that they provide wholesale service at any location, Ms. Sparks suggests their websites indicate otherwise. To support her claim, Ms. Sparks included information printed from the Xspedius website (Attachment RLS-2, attached here as Attachment L); MCI’s website (Attachment RLS-3, attached here as Attachment M); and AT&T’s website (Attachment RLS-6, attached here as Attachment N). In addition, a wholesale customer of both AT&T and MCI stated in response to discovery that it is receiving wholesale loops from both carriers. Please Attachment O for confidential information.<sup>153</sup> Ms. Sparks argues that it is not required that the carrier actually provide wholesale service in the building, so long as it has deployed its own facilities at the location and offers service over those facilities at wholesale on a widely available basis. Finally, Ms. Sparks asserts that competing providers have access to the entire customer location because no carriers indicated in their discovery response that they have been denied building access.<sup>154</sup>

59. Mr. Minter suggests that SWBT merely has identified the locations at which it proposes to seek a finding of non-impairment. He suggests that SWBT should be required to make showings that trigger candidates not only have the relevant dedicated transport or high-capacity loop facilities in place, but also that they actually are offering wholesale dedicated transport or high-capacity-loop facilities service at the relevant capacity levels for each location and route.<sup>155</sup> He states that AT&T has already indicated in response to Staff discovery, that AT&T “does not offer other carriers dedicated transport facilities terminating in any ILEC wire center in Kansas” and does not have wholesale high-capacity facilities at those customer locations to which it has extended its Kansas local network facilities.<sup>156</sup>

60. Mr. Ball suggests that to be widely available, service must be made available on a common carrier basis, for example, through a tariff or standard contract. The fact that a carrier may have provided service to only one or a few other carriers on a route or a mere offer to negotiate an individualized contract does not constitute being widely available. If

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<sup>152</sup> Ibid, p. 37, lines 9-21.

<sup>153</sup> Ibid, p. 19, lines 1-5.

<sup>154</sup> Ibid, p. 17, line 13-p. 19, line 20.

<sup>155</sup> Mr. Minter Direct, p. 36, lines 18-24.

<sup>156</sup> Ibid, p. 37, lines 11-15.

the carrier is required to construct facilities or OSS in order for the service to be made available, then the service is not widely available. Mr. Ball states that SWBT must provide requesting carriers with adequate cross-connect terminations at cost-based rates and must enable sufficient capacity expansion. If carriers are not able to cross-connect at the SWBT central office, then they cannot obtain access to the wholesale providers' facilities. In addition, carriers must be able to obtain the service at nondiscriminatory rates and on nondiscriminatory intervals. Requesting carriers also must be able to order circuits to terminate in all qualified wholesale providers' collocation space.<sup>157</sup>

Potential Deployment:

61. SWBT believes the self-provisioning trigger and/or the competitive wholesale trigger are met for all levels of transport on the routes it identified; however in the event the KCC determined neither trigger is met, SWBT intended to assert that the potential deployment test is met for these routes.<sup>158</sup> SWBT did not intend to pursue a potential deployment case for loops.<sup>159</sup>

62. Ms. Sparks suggests that one of the best indicators of whether alternative transport facilities can be deployed is by looking at where such facilities have already been deployed. This factor looks to evidence of actual deployment in determining impairment but does not require a set number of competitive providers. SWBT asserts that the FCC recognizes this relationship and requires the state commission to examine evidence of "existing facilities-based competition." On this note, SWBT believes that if a competitor has already deployed fiber at or near an SWBT central office, then that carrier has already examined the pertinent economic and engineering considerations and determined that it is economically and operationally feasible to deploy such transport. According to SWBT, the closer a competitor's fiber transport network comes to a SWBT central office today, the less expensive it is to extend that network to the central office in the future.<sup>160</sup>

63. SWBT suggests that the evidence it provided in the trigger analyses shows that competing transport networks have been deployed in Kansas.<sup>161</sup> However, given the accelerated time frame of this proceeding, SWBT is not seeking a determination of non-impairment based on potential deployment for any transport routes that are not already covered under one or both triggers above. Instead, SWBT will consider the potential deployment analysis only as an alternative basis for non-impairment on those routes where SWBT believes that it has demonstrated that one or both triggers have been satisfied.<sup>162</sup> In addition to considering existing facilities-based competition, the FCC Rule 319(e)(2)(ii)(B)(2) states that the Commission is to examine:

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<sup>157</sup> Mr. Ball Direct, p. 23, line 7-p. 24, line 6.

<sup>158</sup> Southwestern Bell Telephone, L.P.'s Identification of Final Position on Dedicated Transport and DS-1, DS-3, and Dark Fiber Local Loops, January 12, 2004, ¶ 9.

<sup>159</sup> Ibid, ¶ 11.

<sup>160</sup> Ms. Sparks Direct, p. 39, line 13-p. 40, line 4.

<sup>161</sup> Ibid, p. 40, lines 9-10.

<sup>162</sup> Ibid, p. 41, line 7-p.42, line 1.



- a. local engineering costs of building and utilizing transmission facilities;
- b. the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission;
- c. installation and other necessary costs involved in setting up service;
- d. local topography such as hills and rivers;
- e. availability of reasonable access to rights-of-way;
- f. availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; and
- g. customer density or addressable market.

Regarding a., b and c, SWBT asserts that there would be “little if any” costs of engineering, laying of fiber and installation involved for the routes previously identified. For these routes, fiber facilities are already in place at both ends, all that remains, at most, is to add multiplexing equipment to “channelize” the fiber to provide DS-3 service. Regarding d, SWBT does not believe topography could prevent the carrier from providing active service because one carrier has already laid fiber and there are no hills and rivers inside a central office to contend with. Regarding e, SWBT argues that since the competing carrier has already deployed fiber, it has already obtained any necessary rights-of-way and used them. Thus, SWBT does not believe rights-of-way availability would be a problem. Regarding f, SWBT suggests the availability of alternative technologies would not be a concern. SWBT addresses traditional fiber optic facilities and fiber-based collocation in its showing, and believes such technology is readily available and in widespread use by carriers. To the extent alternative technologies are also available, SWBT asserts they would simply bolster its showing of potential deployment. Regarding g, SWBT does not believe customer density to be a barrier. All of the routes considered are in urban or suburban areas. In addition, carriers have already deployed facilities on these routes, which shows that they have considered customer density in deciding to deploy such facilities.<sup>163</sup>

64. Mr. Minter and Mr. Ball assert that SWBT is required to demonstrate for each specific customer location and routes that multiple providers would be able to overcome the significant construction delays and still manage to win customers’ business at the level and quantity of facility that is available as a UNE. SWBT would thus be required to demonstrate that the competitive providers would receive sufficient revenues relative to their provision of one or two DS-3s (or dark fiber) to a specific customer loop location or their provision of fewer than twelve DS-3s (or dark fiber) on a specific dedicated transport route to cover the fixed and sunk costs of construction to self-provision such facilities.<sup>164</sup>

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<sup>163</sup> Ibid, p. 42, line 9-p. 44, line 14.

<sup>164</sup> Mr. Minter Direct, p. 39, line 21-p. 40, line 3 and Mr. Ball Direct, p. 26, lines 12-24.

Transitional Issues:

65. Mr. Minter and Mr. Ball suggest that a transition period be established that provides competing carriers a reasonable period of time to self-provision the loops or transport in question and continue to offer service using UNEs pursuant to existing contracts. The latter is essential to AT&T, TCG and MCI because services to enterprise customers are contract-based and generally do not allow the provider to terminate or modify the contract based upon sudden cost increases. They also recommend the development of a multi-tiered transition process such as the one applicable to mass-market switching. First, there should be a transition period of nine months in which CLECs may order new UNEs for locations and routes where the trigger is met. Second, CLECs should have a transition period equal to that applied to line sharing and mass-market switching, which provides a three-year transition process, with one-third of existing customers transitioned within thirteen months, and another one-third transitioned within twenty months and the remainder within twenty-seven months. Third, all high-capacity loops and transport should continue to be made available at TELRIC rates during this transition period. Mr. Minter and Mr. Ball suggest that exceptions should be permitted when a carrier demonstrates that it is attempting in good faith to construct facilities for a location or route for which UNEs are no longer available and that it is incurring a specific problem that makes construction within the applicable timeframe unachievable. The CLEC should be permitted to continue to purchase the identified facility as a UNE until its request is acted on. They also suggest that SWBT be required to maintain an adequate process for ordering combinations of loops and transport in situations where one or both network elements of the combination has been delisted. The Commission should ensure that SWBT has adequate billing processes and procedures in place for CLECs to purchase delisted network elements, whether individually or in combination.<sup>165</sup>

Additional Issues:

66. Mr. Ken Johnson provides testimony on dedicated transport and DS-1, DS-3 and dark fiber loops on behalf of Everest Midwest Licensee, LLC (Everest). He states that eighty percent of Everest's business lines are served via UNE-L, with the remaining traffic being served via its own network.<sup>166</sup> Mr. Johnson indicates that Everest's principal concern is the proposal to deregulate transport between the three central offices in Kansas, located at College Blvd. (KSCYKSCB), 95<sup>th</sup> and Nall (KSCYKSNA), and 95<sup>th</sup> and Pflumm (KSCYKSLE) and the Hedrick tandem located at 7400 Johnson Drive (KSCYKSJO). Everest would have to either (1) pay SWBT "market" prices; (2) negotiate a deal with one of the other parties SWBT has identified as providing transport between those central offices, if the parties actually offer wholesale DS1 transport service, or (3) self-provision DS-1 transport. The third option would require Everest to build collocation facilities into the College Blvd., Nall and Lenexa SWBT central offices each at a significant cost. Mr. Johnson indicates that this represents a significant capital

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<sup>165</sup> Mr. Minter Direct, p. 41, line 13-p. 42, line 24 and Mr. Ball Direct, p. 27, line 3-p. 29, line 3.

<sup>166</sup> Mr. Johnson Direct, February 16, 2004, p. 3, lines 1-2.

expenditure that may not be justified by the number of customers that are served by the loops extending from these SWBT central offices.<sup>167</sup> Mr. Johnson suggests that Everest has not achieved sufficient scale to warrant constructing collocation facilities at College and Antioch (KSCYKSCB), 95<sup>th</sup> and Nall (KSCYKCNA) or 95<sup>th</sup> and Pflumm (KSCYKCLE).<sup>168</sup> In addition, he states that Everest's parent company, Aquila, is under a KCC imposed standstill order, which prohibits Aquila or any of its subsidiaries from borrowing any money or from selling any assets. The standstill order may need to be revisited if additional capital expenditures are required by Everest to enable the company to continue to provide service to its business customers.<sup>169</sup> Mr. Johnson indicates that Everest has not attempted to purchase DS-1 dedicated transport from a competing carrier, therefore it does not know whether competing carriers offer such service. However, Everest believes that without access to SWBT DS-1 transport, Everest would be impaired in its ability to provide service to its customers. Additionally, Mr. Johnson asserts that if some of the companies that are using UNE-P to serve mass market customers are foreclosed from using that strategy, they will be forced to use a UNE-L strategy. As a result, transport capacity may be constrained. Providers that may have capacity today may not be in a position to offer wholesale capacity as a result of this docket.<sup>170</sup> Finally, Mr. Johnson contends that intraoffice transport should never be deregulated because every carrier that establishes a collocation within a central office still must connect to SWBT's network and intraoffice transport is the only way this will occur.<sup>171</sup>

### **Conclusion**

67. The KCC Staff appreciates the opportunity to provide you with the limited information gathered in the Kansas proceeding. Parties to the Kansas proceeding will certainly supplement the information provided here and respond to the arguments put forward which will provide a fuller record from which the Commission may make its determinations. If you wish to review any of the testimony cited herein, redacted copies are available on the KCC web site at:  
[www.kcc.state.ks.us/docket/cal.cgi?docket=03-GIMT-1063-GIT](http://www.kcc.state.ks.us/docket/cal.cgi?docket=03-GIMT-1063-GIT)

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<sup>167</sup> Ibid, p 4, lines 5-19.

<sup>168</sup> Ibid, p. 8, lines 4-6.

<sup>169</sup> Ibid, p. 8, lines 15-20.

<sup>170</sup> Ibid, p. 6, lines 10-26.

<sup>171</sup> Ibid, p. 7, lines 6-27.